

Applicants: Bradford W. Gutting *et al.*
Serial No.: 10/666,826
Filed: September 16, 2003
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Attorney Docket No.: Navy Case 84554

REMARKS

Claims 1-20 are pending in this application. As a consequence of the provisional election described *infra*, claims 1 and 10-20 are withdrawn from examination. No claims are amended.

I. Inventorship Amendment

Consistent with the provisions of 37 CFR §1.48(a), Applicants respectfully request amendment of the inventorship of the above-identified application to delete Lindsay A. Sobota, Amanda S. Schilling and Kelley S. Gaske as named inventors.

A petition and fee are attached hereto in accordance with the requirements of 37 CFR §1.48(a). If entered, the inventors of the above-identified application are:

Bradford W. Gutting, and
Tony L. Buhr.

Entry of the foregoing Amendment is respectfully solicited for the reasons detailed in the attached Petition.

II. Restriction Requirement under 35 U.S.C. §121

In reply to the January 31, 2006 Restriction Requirement, Applicants provisionally elect Group II, claims 2-9, with traverse under 37 CFR §1.143.

The Restriction Requirement categorizes Applicants' claims into five groups: Group I including claim 1 drawn to a spore-germinant produced by IC-21 macrophages; Group II including claims 2-9 drawn to a process to make germinants; Group III including claim 10 drawn to germinants and spores; Group IV including claims 11-19 drawn to a process of germinating spores; and Group V including claim 20 drawn to non-pathogenic bacteria strain spore germinant. Thus, the Restriction Requirement identifies Groups I, III and V as product categories, and Groups II and IV as process categories.

Applicants respectfully assert that at least Groups II and IV should be rejoined because both sets of claims involve germinants and are classified in Class 435. Specifically, independent claim 2 is a method for producing one or more germinants from IC-21 macrophages, while independent claim 11 is a method for germinating spores. Further, claim 10 is directed to a germinant product of the process from claim 2, from which claim 10 depends. See MPEP

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§806.05(f). The Restriction Requirement asserts that the product can be made by materially different process. However, Applicants submit that claim 10 is directed to products produced by the method of claim 2, rather than by alternate methods.

Applicants respectfully submit that the search and examination of the entire application, particularly claims 2-19, could be made without serious burden. MPEP §803 states that "if the search and examination of the entire application can be made without serious burden, the Examiner must examine it on the merits even though it includes claims to distinct or independent inventions" (emphasis added). This policy should apply in the present application in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office. Thus, Applicants respectfully request withdrawal of the Restriction Requirement and rejoinder of at least claims 2-19. See MPEP §821.04.

III. Contact Information

Should the Examiner believe that anything further is desirable in order to place this application in condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,



Gerhard W. Thielman
Registration No. 43,186

Attachments:

Petition to Correct Inventorship
Fee Transmittal under Rule 17(i)

Date: February 10, 2006

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